

REMARKS

By this amendment, claims 1-14, 27 and 31-34 remain in this application. Claims 35-38 have been canceled without prejudice or disclaimer.

The courtesy extended by Examiner Desanto during the telephone interview with the undersigned on February 24, 2004 is acknowledged with appreciation. During the interview, we discussed the suggestions of the Examiner referenced in paragraph 20 of the Office Action. The Examiner stated that Applicants should consider adding language placing the retention member interaction within the apparatus to distinguish over the cited art.

Pursuant to the interview, Applicants have amended claim 1 to positively recite the retention member (in response to the objection of paragraph 3), state the retention member is positioned internal of the apparatus, and recite that the retention member interacts with an internal region of the apparatus. Independent claim 27 has been amended to recite that a retention member is positioned internal of the apparatus and interacts with an internal region of the apparatus to retain the fluid delivery members in the first and second deployed position. Dependent claim 31 has been amended to delete redundancy with amended claim 1.

Applicants appreciate the Examiner's indication that claims 37 and 38 are directed to an independent invention. Applicants also realize that claims 35 and 36 are also directed to the embodiment of Figures 26-32. Therefore, claims 35-38 have been canceled without prejudice.

In the Office Action, claim 35 was rejected as anticipated by Patent No. 5,419,777 (Hofling), claims 27, 35, and 36 were rejected as anticipated by Patent No. 6,425,887 (McGuckin), claims 1, 4-7, 12-14 and 35 were rejected as anticipated by Patent No. 6,283,951 (Flaherty), claims 1, 4-9, 12-14 and 31 were rejected as obvious over Hofling in view of Flaherty, claims 1-9, 12-14 and 27 were rejected as obvious over McGuckin and Flaherty, and claims 1-14, 27, 31-32, and 34-36 were rejected as obvious over McGuckin, Flaherty and Patent No. 6,217,559 (Foster).

Claims 1-14, 27 and 31-38 were also provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over co-pending applications no. 10/074,468 and 10/145,863. A terminal disclaimer accompanies this amendment to expedite prosecution and obviate the rejection.

As noted above, claims 1 and 27 have been amended to recite the location of the retention member and its interaction within the apparatus to retain the fluid delivery member. This feature is not disclosed or suggested in the prior art and therefore the rejections of the claims should be withdrawn. Note that this feature is missing from the prior art so even if the references were combined as the Examiner suggests (assuming solely for the sake of argument that they are even combinable), the combination would not meet the requirements of the present invention. Consequently, for at least the foregoing reasons, independent claims 1 and 27 distinguish over the prior art and Applicants respectfully request withdrawal of the rejections.

Note that dependent claim 10 has been amended to positively recite the plurality of recesses and to position the recesses internal of the apparatus. Dependent claim 11 has been amended to conform to the changes to claim 10. With respect to the rejection of claim 33 under 35 U.S.C. 112, applicants submit that there is adequate disclosure in the drawings to support this limitation. However, to expedite prosecution, and being under final, Applicants have deleted, without prejudice or disclaimer, the cutout feature of this claim.

Claims 2-14 and 31-34 depend from claim 1 and are therefore believed patentable for at least the same reasons that claim 1 is believed patentable.

Applicants submit that this amendment should be entered as it distinguishes over the prior art and places the application in condition for allowance.

Prompt and favorable reconsideration of the present application is respectfully requested. The Examiner is invited to contact the undersigned should the Examiner believe it would expedite prosecution.

Respectfully submitted,

Dated: 3/27/04

By: Neil D. Gershon
Neil D. Gershon
Reg. No. 32,225
Attorney for Applicant

Rex Medical
2023 Summer St.
Suite 2
Stamford, CT. 06905
(203) 348-0377